SOUTH DAKOTA DEPARTMENT OF HEALTH
MINUTES OF PUBLIC HEARING

The Department of Health (DOH) convened a public hearing at 1:30 p.m. on Wednesday, August 18, 2021, at the Kneip Building, 700 Governor's Drive Pierre, South Dakota. A Zoom call-in option was also available. The purpose of the hearing was to conduct a public hearing to accept comments regarding the proposed Administrative Rules Chapter 44:90 regarding the medical cannabis program.

Hearing Officer: Justin L. Williams, Legal Counsel, South Dakota Department of Health, 600 East Capitol Avenue, Pierre, SD.

Persons in Attendance:

Justin Williams, South Dakota Department of Health
Susan Sporrer, South Dakota Department of Health
Geno Adams, South Dakota Department of Health
Ali Tornow, South Dakota Department of Health
Deb Mortenson, Optometric Society
Morgan Nelson, South Dakota Department of Revenue
Brian Doherty, Pro Medical
Jake Johnson, BHCC LLC
Vicki Warne
Darby Boyd
Scott Engel
Tim Engel, South Dakota State Medical Association
Jaela Schultz
Adam Altman
Michaela Seiber, South Dakota Urban Indian Health
April Matson, South Dakota Urban Indian Health
Samantha Chapman, South Dakota Urban Indian Health
Marissa Turner, South Dakota Urban Indian Health
Tami Hagie-Lorenza, South Dakota Urban Indian Health
Joe Hodatt, RCS
Jason Tarasek, Dakota Natural Growers
Jeremiah Murphy, Cannabis Industry Association of South Dakota
Bridgett Rendrel
Kitt Jeffries, Dakota Cannabis Consulting
Ned Horsted, Cannabis Industry Association of South Dakota
Emmett Reistroffer, Johnson Properties, LLC
Steven Buysman, SDMCS, LLC
Michael Arbach
Sarah Aker, South Dakota Association of Healthcare Organizations
Grace Beck
Austin Goss, Dakota News Now, KOTA
Matt Jorgensen, Cannabis Chem Lab

Mark Deak, SDHCA
Calvin Reilly, BHB
James Coates
Maria Bruner

Online Participants

Adrian Salsgiver
Al Schnabel
Courtney Keith
David Zinz
Derrick Gutormson
Tracy Aman
Larry Weiers
Jason Karimi
Ned Horsted, Cannabis Industry Association of South Dakota
David Hoke
Brandon Watt, The Harvest Club
Joseph Prasek, Flandreua Santee Sioux Tribal Clinic
Jason Tarasek
Liz Tiger
Daniel Asarch
Ashley Kingdon-Reese, Nursing Industry/Behavioral Health
Ricky Reese
Cameron Young
Lori Johnson, dispensaries and cultivators (by proxy, Bailey Ratchen)
Linda Grace W Freeman
Christopher Dietrich, MD, South Dakota State Medical Association

Exhibits: There were twelve (12) exhibits marked and received into evidence.

Exhibit A: Emails from State Representative Fred Deutsch requesting: (1) the addition of definitions for "bona-fide doctor-patient relationship" and "debilitating"; (2) removal of glaucoma form the list of debilitating medical conditions; (3) changing the definition of "debilitating medical condition" in SDCL § 34-20G-1(8) from a "chronic or debilitating disease…" to "a chronic and debilitating disease…".
Exhibit B: Letter from Sherman Hom, PhD, Director of Regulatory Affairs with Medicinal Genomics, requesting modifications of required microbial testing of medical cannabis
Exhibit C: Letter from Ryan Gereats, MD, President of SD Academy of Ophthalmology, requesting removal of glaucoma from the list of debilitating medical conditions.
Exhibit D: Email from Tony Powell, requesting addition of hypersensitive nerve syndrome, psoriatic arthritis, psoriasis, and neuropathy to list of debilitating medical conditions and consideration of referrals for medical cannabis from out-of-state physicians.
Exhibit E: Emails from Greg Neitzert, of Sioux Falls, requesting: (1) definition of "school,"; (2) prohibiting entities or third parties from advertising with certain things like leaf or marijuana in

public; (3) consideration of a rule to outline how third parties (e.g. landlords) could confirm registration of an individual as a cardholder.
Exhibit F: Email from Amy Blair, asking that physicians assistants be allowed to recommend medical cannabis use.
Exhibit G: Letter from J. Geoffrey Slingsby, MD, requesting removal of glaucoma from the list of debilitating medical conditions.
Exhibit H: Letter from Yvonne Taylor, Executive Director of the SD Municipal League, requesting changes to §§ 44:90:03:01 to require new application on transfer of ownership, 44:90:04:04 to require notice to law enforcement of criminal activity to be simultaneous with notice to DOH, 44:90:04:05 to clarify when co-location of establishments is permitted, 44:90:04:15 to clarify establishments cannot allow direct access from a business that sells alcohol or tobacco, and 44:90:04:20 to require vehicles not be identifiable as transporting marijuana or cash.
Exhibit I: Email from Greg Barnier, City of Sturgis, requesting additional language be added to 44:90:03:01(1)(F), 44:90:03:08(1), and 44:90:03:11(1) to accommodate municipalities that may wish to maintain a license for a dispensary.
Exhibit J: Email from Dr. Brian Smith, asking that patients be required to present additional documentation beyond documentation of a qualifying condition.
Exhibit K: Letter from Timothy Engel representing the South Dakota State Medical Association, requesting: (1) definition of "allowable amount" by potency; (2) changes in the practitioner recommendation for qualifying patient cultivation; (3) addition of disclaimer on cannabis product packaging regarding cannabis's abuse potential and no FDA approval; (4) removal of glaucoma from the list of qualifying medical conditions; (5) the physician medica license and National Practitioner Identifier number not be available to the patient; and (6) practitioners have access to the DOH database for the purpose of confirming whether a patient is a holder of a registry identification card.
Exhibit L: Letter from Kathy Nucifera, Chief Operating Officer, COLA, Inc., requesting inclusion of COLA, Ins. in the definition of "ISO/IEC 17025" (ARSD 44:90:01:01(27)).

Oral Testimony: Twenty-six people gave oral testimony in person, or by Zoom.

1. Adrian Salsgiver testified that he is a medical cannabis patient from Washington, D.C. He is in favor of medical cannabis use. He testified that PTSD should be a qualifying condition, and that veterans should all qualify for medical cannabis.

2. Larry Weiers testified that he lives in Spearfish and has rheumatoid arthritis, as well as Type 1 diabetes. The current list of qualifying medical conditions does not include his conditions. He testified that due to a kidney transplant, he cannot take medication for his conditions and pain, although he could use medical cannabis. He does have access to medical cannabis through Arizona. He testified that any disease with debilitating pain should qualify for medical marijuana.

3. Jason Karimi believes that the DOE is violating federal law in regard to buying guns and insurance for medical cannabis patients. He would like to see South Dakota follow Iowa's example and petition federal government. Need marijuana to be legal federally to solve black market issues.

3. Melissa Mentele testified that the proposed rules are derivative of a good framework of laws. She testified that she is coming forward with a comprehensive bill to reflect the will of the voters.

4. Liz Tiger testified that she is a qualifying patient, and she appreciates hard work of the DOH thus far. She testified that the purpose of her testimony was to advocate for medical cannabis patients, and not recreational marijuana.

5. Ashley Kingdon-Reese testified that she is a nurse with several businesses and serves people with disabilities and home health care. She testified that the proposed rules do not protect small businesses, despite the Governor's statements that she is an advocate for small business. She testified that she would like the rules to: include rheumatoid arthritis and mental health conditions, give preference to SD small businesses, limit the amount a county can charge for an application fee, not overtax businesses, and require storage of video footage for 30 days and not 120 days. She testified that there should be separate department for medical cannabis, and that participants should keep their own inventory system. She stated that testing could be defined better and the state should consider a nursery license for plants.

6. Ricky Reese testified that he is grateful for the work of DOH in drafting rules. He is a small business owner and does not want South Dakota to make the mistake of not supporting small business. He agreed with many of Ashley Kingdon-Reese's comments, particularly about video storage.

7. Cameron Young testified that he supports many of Ashley Kingdon-Reese's comments about protecting businesses in South Dakota. He testified that the proposed Sioux Falls ordinance installing a $100,00 application fee does not support local business. He asked if people will get fees back if they do not get a license. He also said that the 35% tax is far too high for medical cannabis and harms patients.

8. Linda Grace Freeman testified that she wants clarification on 3 oz for 14 days limit, and wants to know difference between manufacturer and dispenser, and if products can be compounded between CBD and THC.

9. Tim Engel representing the South Dakota State Medical Association testified that the Association advocated against IM26 due to public health concerns but recognizes voters have spoken, and now the Association wants to protect public health.

10. Dr. Christopher Dietrich testified that physicians should be removed from the cultivation decision, they aren't qualified to get involved in those decisions. He also testified that physicians want access to the registry identification. He testified that the statute definition should stay as is and qualifying conditions should include that they are debilitating.

11. Brian Doherty testified that veterans are not mentioned anywhere in the rules, and he believes that the rules should have special considerations for all veterans and should contemplate implementation at VA hospitals.

12. Scott Engle testified that he has Parkinson's disease, and appreciates that marijuana will be available. He wants to keep out-of-state companies out of South Dakota and make this a business opportunity for small businesses.

13. Micheala Seibert of Urban Indian Health testified that through her job she sees many patients from underserved areas, who do not typically have good access to healthcare, or to physicians. She testified that the rules should allow Certified Nurse Practitioners and Physician Assistants to certify patients for medical cannabis.

14. Marissa Turner is a Nurse Practitioner and works for Urban Indian Health. She testified that transportation and childcare are barriers to many of her patients to get specialized care, and that the rules should allow CNPs to certify patients for medical cannabis.

15. Tammy Hoge Laurenz, Chief Medical Officer for Urban Indian Health, testified that the rules should allow Certified Nurse Practitioners and Physician Assistants to provide written certifications.

16. Jason Terasek, an attorney in Minnesota representing Dakota Natural Growers, testified that vertically integrated businesses are a good idea, and 44:90:04:05 should be clarified as to whether vertical integration is allowed. Also, a vertically integrated business would be prohibited from using ethanol to extract under the rules, and he believes that should be changed. He also stated that a vertically integrated business would face challenges with the pesticides allowed. He proposes that the regulations be relaxed to allow businesses more flexibility.

17. Jeremiah Murphy, representing the Cannabis Industry of South Dakota, testified that the potency caps in 44:90:02:10 are beyond the authority of SDCL 34-20G. He also supports the Medical Association's comment that doctors shouldn't be involved in deciding the number of plants a patient can cultivate at home. He also stated that more than just physicians should be able to certify a patient for medical cannabis.

18. Kit Jeffries, of Dakota Cannabis Consulting, testified that the rules require packaging flower and/or trim prior to arrival at a dispensary limits the flexibility of a dispensary to sell medical cannabis in low-dollar-amounts. He testified that dispensaries should be able to sell and package flower and/or trim, and that in 44:90:10:01(2), remove "for retail sale." He also testified that the state should have full reciprocity for medical cannabis patients from any state where medical cannabis is allowed.

19. Emmit Reistroffer testified that DOH has been very transparent in promulgating the rules. He testified that the state should have full reciprocity for medica cannabis from other states. He requested that the word "freestanding" be removed from 44:90:04:15.

20. Matt Jorgenson, CEO of Cannabis Chemlabs, a testing facility for Native Cannabis program in Flandreau, testified that the testing deadline of January 1, 2024 is confusing and makes arbitrary barrier to entry. He proposed that in 44:90:03:04 the date be changed to November 2021, with quarterly reports. He suggested that in 44:90:06:01 the date be November 2021.

21. Jim Coats testified that he is a business owner in Wall. He also has experience with seizures. He believes that there are too many restrictions and regulations regarding medical cannabis, and that the regulations place a burden on patients. He also believes the current regulations do not support small business owners in South Dakota.

22. Ned Horsted, CEO of Cannabis Industry Association of South Dakota, testified that the department has been collaborative and transparent in this process. He testified that he does not think doctors should certify extended plant count for patients. He proposes a 12-plant maximum for home grow patients. He suggests allowing electronic forms, reciprocity for other state medical cannabis patients, employee badges should be created by the department, and that the tethering requirements should be removed.

23. David Zinz testified that he suffers from multiple illnesses that may be alleviated by medical cannabis that are not included on the list of debilitating conditions. He requests that the rules allow flexibility and room to grow so that all patients can be served.

24. Bailey Ratchen testified on behalf of Lori Johnson. Lori is asking for small business preference over out of state businesses, and that a cap be put on county fees at $50,000. She also requests that the 35% sales tax be allocated to public education. In addition, video storage should be reduced from 120 days to 30 days. She also suggests a requirement that businesses that receive a license must begin operations within 90 days of getting the license or be required to give up the license.

25. Darby Boyd testified that she is a Pierre patient. She testified that the requirements in 44:90:10:11 governing labeling should be removed because the requirements have not been researched enough to be on a label.

26. Vickie Warnen testified that she is a previous director of UIH and a prior DOH employee. She runs a CBD business in Pierre and hopes to open a dispensary for medical cannabis. She says the need for medical cannabis is overwhelming, and FDA approved drugs can do horrible things to patients.

Adjournment: 3:17 p.m.

Respectfully submitted,

Dated: September 2, 2021

Justin L. Williams

FORM 10 ATTACHMENT – WRITTEN COMMENTS ON PROPOSED MEDICAL CANNABIS RULES

DATE	EXHIBIT	COMMENT	COMMENTER	RESPONSE/CHANGES MADE TO REVISED RULES
CHAPTER 44:90:01 – DEFINITIONS				
44:90:01:01 – Definitions				
7-28-21	Exhibit A	Define the meaning of a bona-fide doctor-patient relationship. New Jersey's medical marijuana laws defines a bona-fide doctor-patient relationship as existing for at least one-year OR the doctor has seen the patient on at least four visits for care of the debilitating medical condition. Please consider something similar to help prevent doctor-shopping and other abuses seen around the country.	Representative Fred Deutsch District 4, Florence, SD	No change – defined by § 34-20G-1(2)
7-28-21	Exhibit A	Change the definition of debilitating medical conditions in SDCL 34-20B-1 to read "a chronic or debilitating disease…" to "a chronic and debilitating disease…".	Representative Fred Deutsch District 4, Florence, SD	No change – definition in § 34-20G-1(8)
8-12-21	Exhibit A	Add definition of "debilitating" to help guide providers in differentiating between a debilitating vs. non-debilitating diagnosis. The state should have the expectation that not every person with a diagnosis on the list is debilitated.	Representative Fred Deutsch District 4, Florence, SD	No change – defined by § 34-20G-1(8)
7-29-21	Exhibit D	Not sure if this may be something to add to administrative rules because it would clarify the law and your interpretation, or if there is another section of state law that answers this. The law references the term "school" but never defined it in SDCL 34-20G. Does that mean K-12 or include post secondary? The most important for local governments is how this is going to be enforced from the state license requirements: (1) the physical address of the prospective medical cannabis establishment that is not within one thousand feet of a public or private school existing before the date of the medical cannabis establishment application; (2) Will the department consider K-12 only, colleges and other post secondary, preschools, or some combination of all. If not defined in state law defining what school will mean in rules might be helpful to all.	Greg Neitzert Sioux Falls, SD	No change – using plain and ordinary meaning (§22-24B-22)
8-5-21	Exhibit L	Add COLA, Inc. to the definition of "ISO/IEC 17025 accreditation" in subsection (27).	Kathy Nucifora, COLA Inc. Columbia, MD	No change – already fit within definition
8-25-21	Exhibit X	Subsection (16) – change "lower" to "higher" – this should be the maximum of the allowable amounts of (A,B,C,D,E). Stakeholders need clarity on this. If you required 1000ppm of butane, you will kill people. Subsection (16)(B) – Metals make sense but for solvents, even benzene is 1.0 ppm in CA standards – the most restrictive in the country.	Ned Horsted Cannabis Industry Association of SD	Definition of "Detectable level" replaced with "action level" (pg. 3)
CHAPTER 44:90:02 – REGISTRY IDENTIFICATION CARDS				
44:90:02:01 – Practitioner's written certification of debilitating medical condition and therapeutic or palliative benefit				
7-29-21	Exhibit D	His referral for medical marijuana is from a physician in Pennsylvania. How will referrals from out-of-state physicians be addressed	Karla Powell	No change – covered by 44:90:02:08
8-2-21	Exhibit F	Allow PAs to provide written certification for medical cannabis use	Amy Blair	No change – not permitted by §§ 34-20G-1(20) and 34-20G-29(1)
8-12-21	Exhibit K	Subsection (2)(b) – strongly opposes any requirement that exposes the practitioner's SD medical license and National Practitioner Identification numbers. SDSMA does not oppose a requirement for a practitioner to provide their licensure and NPI numbers in a manner that isn't available to the patient or the public in general so as to allow for practitioner verification or as otherwise contemplated by SDCL 34-20G-88.	Timothy Engel SD State Medical Association	Changes to §44:90:02:01 to require practitioner to submit written certification to DOH (pg. 10)
8-25-21	Exhibit X	Remove Subsection (1) requiring a physician to issue a certification. Subsection (2) change "a form" to "an electronic or paper form" (and throughout rules). Subsection (2)(F) remove "<u>,including the therapeutic or palliative benefits and risks associated with the medical use of cannabis</u>"	Ned Horsted Cannabis Industry Association of SD	No change – Subsection (1)&(2)(F) required by §34-20G-1(23);

				changes to subsection (2) not necessary.
44:90:02:02 – Practitioner certification – Recommendation for cultivation of cannabis – Extended plant count				
8-12-21	Exhibit K	Modify this section and such other rules as may be necessary to remove practitioners from the qualifying patient cultivation process except with respect to a recommendation for the cultivation of more than three plants as set out in proposed ARSD 44:09:02:02(3). Modify subsection (5) to read as follows: "Nothing in this section requires a practitioner to provide a written certification or a recommendation for cultivation	Timothy Engel SD State Medical Association	No change – Practitioners required to recommend for >3 plants; burdensome for different entity to certify for ≤3 plants. Added § 44:90:02:04 to clarify practitioner does not have to provide written certification if doesn't believe there is therapeutic/palliative benefit to patient (pg. 13)
8-18-21	Exhibit R	Remove the requirement for physician certification or recommendation for home cultivation of cannabis. Physicians are not trained in marijuana cultivation and do not have a medical rationale for assessing an individual's fitness for home cultivation. Furthermore, SDCL 34-20G-01(1)(c) only requires the physician to be involved in cultivation if prescribing an amount different than the three cannabis plant minimum currently in place under statute. In our review of other state medical cannabis programs, SDAHO notes that no other states require a physician to certify or recommend a patient for home cultivation. Instead, other states base the rationale or decision making for home cultivation of cannabis on a geographic distance from a dispensary such as Arizona and Nevada or through a hardship application such as in Massachusetts. SDAHO recommends that South Dakota adopt a similar policy for home cultivation that is based on objective criteria and not physician certification or recommendation. SDAHO is otherwise supportive of the department's proposed language requiring recommendation or certification from a physician for home cultivation of plants in excess of the limits described in proposed rule 44:90:02:02.	Tim Rave, CEO SD Assn. of Healthcare Organizations	No change – Practitioners required to recommend for >3 plants; burdensome for different entity to do certification for ≤3 plants
8-25-21	Exhibit X	Subsection 2 – change "three" to "twelve". Statute is a three plant "minimum" – set the cap at twelve, which is in line with most states and be done with it. Remove Subsection 3 – change "three" to "twelve" and "120 days" to "365 days" – keeps consistent with (2) but recommend just capping home cultivation at 12. 120 days isn't even enough time for some strains to mature. 2020 Colorado DOR Annual Report has a higher number than this. Doesn't take into account that this is the AVERAGE. Cannabis Sativa can have +-120 days of FLOWERING time, let alone veg and immature. Pg. 27 https://cdor.colorado.gov./data-and-reports/cdor-annual-reports	Ned Horsted Cannabis Industry Association of SD	No – no authority to set maximum in subsection 2. Change subsection 3 from 120 days to 200 days (pg. 12)
8-27-21	Exhibit Z	Subdivision 4 – 120 days for extended plant count cultivation is unreasonable. There are thousands of cannabis genetics out there. Some genetics can grow for up to 200 days. By limiting the amount of days an at home cultivator may be able to utilize an extended plant count then they limit the opportunity for home cultivators to do their own research in what genetics help their conditions. Commercial cannabis cultivation is a for-profit business and cultivating those strains are bad for business. The cost of goods per gram greatly outweighs the return on investment and isn't feasible for commercial cultivators, whereas home cultivation should have more flexibility for patients.	Kittrick Jeffries Dakota Cannabis Consulting	Change subdivision 3 from 120 days to 200 days (pg. 12)
44:90:02:04 – Patient designation of designated caregivers – Minor patients – Person responsible for making medical decisions – Designation by residents of health care facility or residential care facility				
8-23-21	Exhibit Q	Give additional consideration to make sure government is not unduly burdensome on caregivers and patients. The rules should not require caregivers to submit passport quality photos every five years. "Direct costs" should be adequately defined and consideration should be given to some	Representative Ryan Cwach District 18, Yankton, SD	No change – § 34-20G-2(2) addresses reimbursement of

		form of regulated payment or income for providing what will undoubtedly be a valuable service to those who need it. The purpose of the caregiver statute is to provide access to medical marijuana to those who a doctor has determined would benefit from it. The rules should reflect this purpose.		caregivers. Photo required can be taken with a cell phone.
8-18-21	Exhibit R	Support the department's language in 44:90:02:04 requiring a facility director or designee's approval for an employee of a healthcare facility to act as a designated caregiver while on the premises of the healthcare facility. This rule allows facilities to be aware of instances where medical cannabis made be handled by a member of their facility.	Tim Rave, CEO SD Association of Healthcare Organizations	No response
44:90:02:05 – Application to cultivate cannabis – Patient designation of designated caregivers to cultivate cannabis				
8-23-21	Exhibit Q	See comment on 44:90:02:04	Representative Ryan Cwach District 18, Yankton, SD	No change
8-25-21	Exhibit X	Subsection 1(B) – change "and" to "or" – Privacy violation? Choose one – a diagram OR a photograph of the inside of someone's domicile. Subsection 6 – cap everyone at 12, get rid of extended plant counts	Ned Horsted Cannabis Industry Association of SD	Subsection (1)(B) – No change, both are required. Subsection 6 – No authority to set maximum.
44:90:02:08 – Nonresident registration – Required documentation				
8-25-21	Exhibit X	We oppose nonresident registration entirely and ask that this section be struck and replaced with the suggested language or Nevada language below. The intent of the law was for patients to have full reciprocity without unnecessary hoops to jump through. Nevada Language: Medical cannabis dispensary authorized to dispense cannabis to nonresidents of this State under certain circumstances. [Effective July 1, 2021.] 1. A person who is not a resident of this State, but who is authorized to engage in the medical use of cannabis under the laws of his or her state or jurisdiction of residence, is deemed to hold a valid registry identification card for the purpose of the exemption from state prosecution described 34-20G-51 if the person abides by the legal limits on the possession, delivery and production of cannabis for medical purposes in this State, as set forth in 34-20G-1(1). 2. A medical cannabis dispensary may dispense cannabis to a person described in subsection 1 if the person presents to the medical cannabis dispensary any document which is valid to prove the authorization of the person to engage in the medical use of cannabis under the laws of his or her state or jurisdiction of residence. This rule would force all nonresidents to be evaluated in exactly the same manner as residents are evaluated. Such a strict interpretation would be an unreasonable implementation of the law as it affects the convenience of the people who have a documented need for medical marijuana. We urge the Department to follow the precedent set in our driver licensing laws as those are applied to non-residents. South Dakota grants nonresident drivers full use of our roads and highways despite the fact other state's driver exam requirements are inconsistent with SD requirements. <u>Recommendation:</u> 44:90:02:08. Nonresident registration – Required documentation. 1. The department shall accept ~~any of~~ the following as sufficient documentation of a nonresident's debilitating medical condition: ~~(A) Practitioner certification issued in the person's jurisdiction of residence and listing a debilitating medical condition consistent with SDCL 34-20G-1 or rules promulgated by the department~~; ~~(B) Practitioner certification issued in the person's jurisdiction of residence, along with additional medical records indicating a debilitating medical condition recognized by the department pursuant to SDCL 34-20G-1 or rules promulgated by the department; or~~ ~~(C) Practitioner certification on a form supplied by the department. Prior to issuing a nonresident registration, the department shall determine whether the applicant's registry identification card or~~	Ned Horsted Cannabis Industry Association of SD	No change – nonresidents must follow SD laws

		~~its equivalent allows the use of cannabis, as defined in SDCL 34-20G-1(1) (14), in the jurisdiction of issuance.~~ (A) A medical marijuana card issued by a United States' state, tribal, or territorial government agency.		
8-27-21	Exhibit Z	Cardholders in Oregon already have a great deal of bureaucracy to go through to get their medical marijuana cards. They may only be visiting for a short while and by requiring them to go through extra layers of paperwork would discourage out-of-state patients from purchasing in South Dakota. Patients would be more inclined to bring their products with them.	Kittrick Jeffries Dakota Cannabis Consulting	No change – nonresidents have to follow SD laws
44:90:02:09 – Nonresident registration – Identification number				
8-25-21	Exhibit X	Delete Subdivision (2) requiring nonresidents to designated two dispensaries.	Ned Horsted Cannabis Industry Association of SD	No change – covered by §§ 34-20G-70 and 34-20G-72(8)
44:90:02:10 – Allowable quantity of cannabis products				
8-12-21	Exhibit K	Define the allowable amount of cannabis by potency as permitted by SDCL 34-20G-1(1)(b) and 34-20G-72(9)	Timothy Engel SD State Medical Association	§ 44:90:02:17 updated (pg. 22)
8-25-21	Exhibit X	The statute grants the Department the authority to establish the amount of concentrated cannabis each cardholder may possess. However, the statute grants the Department no authority to establish limits on the potency of concentrated cannabis that may be possessed. In the definition section of 34-20G, "amount" is clearly used to express quantity or volume of material, not the potency of material. Specifically, 34-20G-1 (1) (b) limits the department to promulgating rules regarding "The quantity of cannabis products …" — 34-20G-1.Definitions. Terms used in this chapter mean: (1) "Allowable amount of cannabis," means: (a) Three ounces of cannabis or less; (b) The quantity of cannabis products as established by rules promulgated by the department under § 34-20G-72; (c) If the cardholder has a registry identification card allowing cultivation, three cannabis plants minimum or as prescribed by physician; and (d) If the cardholder has a registry identification card allowing cultivation, the amount of cannabis and cannabis products that were produced from the cardholder's allowable plants, if the cannabis and cannabis products are possessed at the same property where the plants were cultivated; 34-20G makes no reference to "THC" nor to "tetrahydrocannabinol". 34-20G includes only two references to "potency" and both of those relate only to potency as one element of testing with no grant of regulatory authority to limit potency. As a practical matter affecting the persons likely to be impacted by this proposed rule, when combined with timing limitations on amounts of medical marijuana purchases, the rule would make it difficult or impossible for certain people to meet their medical needs. The rule would also require producers to adulterate products in order to lower the potency thus causing an extra expense for producers and a lower grade product for consumers. <u>Recommendation:</u> Strike 44:90:02:10 3. (B)	Ned Horsted Cannabis Industry Association of SD	No change – Authority in §§ 34-20G-1(1)(b) and 34-20G-72(5))
8-27-21	Exhibit Z	Subsection 3 – This section requires any product over 60% THC to be monitored. – 44:90:10:14:3(d) - labeling for this policy reference. – 44:90:03:05:2(B) - This section allows product manufacturing establishments to add a detailed description of the infusion of glycol, glycerin, or food-grade fats to smokable products. (This	Kittrick Jeffries Dakota Cannabis Consulting	§ 44:90:02:17 updated (pg. 22)

		would incentivize establishments to save on COG's by diluting concentrates or other products that have 60% THC+. They then can sell more products.) – It puts undue burden on patients who need higher potency products. There are patients that consume more than a gram of high potency concentrate a day. Cannabis concentrate is the fastest acting form of cannabis product on the market today compared to edibles that take up to 2 hours to take effect. These high potency products are needed for patients suffering from pain and if they can't get enough within a two week period from a legal/licensed dispensary, they will be able to get them from the black market.		
44:90:02:11 – Fees for registry identification cards				
8-18-21	Exhibit M	Veterans should be considered for reduced application fees and any veteran who has a disability rating have their application fees waived	Brian Doherty Ft. Pierre, SD	No change - §34-20G-72(10)(c) only addresses income
General comments on Chapter 44:90:02				
8-16-21	Exhibit E	Have you considered a rule that would outline exactly how a cardholder would get some sort of document or how a third party would get a confirmation of registration of an individual being a cardholder? Talking to landlords, they have questions as to how they would confirm someone was a cardholder. Pursuant to 34-20G-90 the cardholder could somehow authorize the department to disclose their status. I wonder if there is anything that needs to be in the rules or if this is something that is just a departmental policy?	Greg Neitzert Sioux Falls, SD	No change - covered by §34-20G-90
8-12-21	Exhibit J	My understanding is that currently, certificates will be valid for 1 year for patients with documented qualifying conditions. The problem I see in this is that if we are working with a patient on managing a medical condition, and we trial a new medication, after discussion of risk/benefit, the trial is initiated, and response evaluated. Medical marijuana would not be a first treatment for a condition, but rather a potential treatment (much like opioids for chronic pain,) if other modalities have not worked. If it is determined that the patient is not responding appropriately, we also need a mechanism to stop said treatment. If we are using it medically, it should be manageable medically as well. If patients only have to present documentation of a qualifying condition, you can rest assured the system will be barraged with recreational users looking to be able to continue to use it legally. This is not medical use. Providers need the appropriate tools to manage the medical use if that is our goal.	Brian Smith, MD	No change – covered by §§34-20G-43 and 34-20G-49
8-12-21	Exhibit K	In the interest of patient health and safety, revise rules to authorize practitioner access to the Department's database for the purpose of confirming whether a patient is the holder of a registry identification card.	Timothy Engel SD State Medical Association	No change – confidential pursuant to §34-20G-44
8-18-21	Exhibit M	Veterans who get their care at the VA be considered qualifying patients under the state's medical marijuana law without receiving a diagnosis from a registered physician if they provide their Veterans Administration award letter "indicating an existing disability" that qualifies under the state's definition.	Brian Doherty Ft. Pierre, SD	No change – prohibited by §34-20G-29
8-23-21	Exhibit P	New applicants may have difficulty in determining whether the contents of their application will be sufficient to satisfy the department's requirements. It would be helpful for the department to provide written guidance providing more detail about the department's requirements for applications. It would also be helpful for the department to provide telephone assistance for applicants.	Richard Stanley (representing cannabis cultivation operation) Nashville, IN	No change necessary
8-24-21	Exhibit T	Wants less restrictions on access to and potency of medical cannabis	Lester Dean Box Elder, SD	No change
CHAPTER 44:90:03 – REGISTRATION CERTIFICATES				
44:90:03:01 – Application for registration certificate – Components of complete application				

No date	Exhibit H	Transfer of location (especially) should not be allowed without "starting over". We do not want any chance of creating a system whereby the license itself accumulates value.	Yvonne Taylor SD Municipal League	Changes to §44:90:03:03 and §44:90:03:04 address change of location and change of ownership (pgs. 26-27)
8-6-21	Exhibit I	Add to (1)(F) – "For an application received from a municipal corporation, the identification information shall be for all members of the governing body, the Mayor, and if operating under the City Manager form the City Manager."	Greg Barnier City of Sturgis	No change – nothing prohibits municipality from applying for a certificate
44:90:03:02 – Operating procedures – Required contents – All medical cannabis establishments				
8-25-21	Exhibit X	Subsection 2(D) – delete "completely self-contained"	Ned Horsted Cannabis Industry Association of SD	Changes to §44:90:03:05 (pgs. 28-30)
8-27-21	Exhibit Z	Subsection (2)(d) – This language is confusing on if I can utilize an old strip mall as my cultivation/manufacturing and dispensary.	Kittrick Jeffries Dakota Cannabis Consulting	Changes to §44:90:03:05 (pgs. 28-30)
44:90:03:04 – Cannabis testing facility operating procedures – Additional requirements				
8-25-21	Exhibit U	This rule as drafted with different standards for labs entering the SD cannabis market either side of a January 1, 2024 date, is confusing and we believe creates arbitrary barriers to entry for testing labs. The South Dakota Legislative Research Council (LRC) requires a date certain to ensure there is not an unconstitutional delegation of authority; however, the unintended consequences of the rule wording make it impossible for new labs to come on-line after the date certain. Recommendation is to amend 44:90:03:04 ~~(A) Prior to January 1, 2024…~~ **to instead read:** (A) Beginning November 1, 2021…: and ~~(B) On or after January 1, 2024: (1) Proof of ISO/IEC 17025 accreditation for each analytical test proposed; or (2) If an initial application…~~ **to instead read:** (B) If an initial application or a renewal application for a cannabis testing facility that has been licensed for less than 18 months, an agreement to: (1) Submit quarterly reports to the department on its progress toward ISO/IEC accreditation; and (2) Comply with any department requests for confirmation testing at the cannabis testing facility's own expense.	Deb Peters, Pinnacle Adviser, LLC (consultant with SD analytical testing laboratory)	Changes to §44:90:03:07 (pgs. 31-33)
8-25-21	Exhibit V	This rule as drafted with different standards for labs entering the SD cannabis market either side of a January 1, 2024 date, is confusing and we believe creates arbitrary barriers to entry for testing labs. The South Dakota Legislative Research Council (LRC) requires a date certain to ensure there is not an unconstitutional delegation of authority; however, the unintended consequences of the rule wording make it impossible for new labs to come on-line after the date certain. Recommendation is to amend 44:90:03:04 ~~(A) Prior to January 1, 2024…~~ **to instead read:** (A) Beginning November 1, 2021…: and ~~(B) On or after January 1, 2024: (1) Proof of ISO/IEC 17025 accreditation for each analytical test proposed; or (2) If an initial application…~~ **to instead read:** (B) If an initial application or a renewal application for a cannabis testing facility that has been licensed for less than 18 months, an agreement to: (1) Submit quarterly reports to the department on its progress toward ISO/IEC accreditation; and (2) Comply with any department requests for confirmation testing at the cannabis testing facility's own expense.	Matthew Jorgenson, CEO Cannabis Chem Lab	Changes to §44:90:03:07 (pgs. 31-33)
8-25-21	Exhibit X	This rule as drafted with different standards for labs entering the SD cannabis market either side of a January 1, 2024 date, is confusing and we believe creates arbitrary barriers to entry for testing labs. The South Dakota Legislative Research Council (LRC) requires a date certain to ensure there is not an unconstitutional delegation of authority. However, the unintended consequences of the rule wording make it impossible for new labs to come on-line after the date certain. This change	Ned Horsted Cannabis Industry Association of SD	Changes to §44:90:03:07 (pgs. 31-33)

		will also maintain the date certain remain intact as prescribed by LRC to ensure there is not an unconstitutional delegation of authority to the accreditation body. Recommendation: Amend 44:90:03:04 4. ~~(A) Prior to January 1, 2024…~~ to read: (A) Beginning November 1, 2021…: and ~~(B) On or after January 1, 2024: (1) Proof of ISO/IEC 17025 accreditation for each analytical test proposed; or (2) If an initial application…~~ to instead read: (B) If an initial application…		
8-27-21	Exhibit Z	Subsection B – add language with the intent of deleting the July 2024 deadline, yet all labs have to start the process for ISO accreditation and have 18 months to complete accreditation. Don't put a hard deadline like Oregon did for ORELAP accreditation. This hard deadline created a higher barrier of entry for new labs to get into the market.	Kittrick Jeffries Dakota Cannabis Consulting	Changes to §44:90:03:07 (pgs. 31-33)
44:90:03:08 – Local registration, license, or permit – Department verification				
8-6-21	Exhibit I	Add to (1) – "C. For a city or county submitting an application, a copy of the applicable resolution of the governing body authorizing the submission of the application or renewal to the Department."	Greg Barnier City of Sturgis	No change – nothing prohibits municipality from applying for a certificate
44:90:03:11 – Department review of competitive application – Scoring criteria				
8-6-21	Exhibit I	Add to (1) – "A. For a city or county limiting the number of establishments, if it has provided a copy of the ordinance or resolution which authorizes the city or county to hold a license for that establishment. (2 points)"	Greg Barnier City of Sturgis	No change – nothing prohibits municipality from applying for a certificate
8-23-21	Exhibit Q	Consider additional criteria such as applicant's prior experience in medical marijuana with increase points rewards to more experienced applicants. Rules should discourage applicants seeking a gold rush with limited or no experience. Consider adding considerations for persons who have not been subject to bankruptcy proceedings or other similar criteria that may indicate an applicant's financial merits. Special weight should be given to a local community or county's preferred applicant. Like all other forms of zoning, local control should be preferred. Want to avoid a "race to the courthouse" situation. The first applicants may not be the best applicants for communities that initially limit licenses. Early successful applicants may also be able to unjustly profit from obtaining and then selling a license to a third party. Instead, the rules should provide deadlines when DOH will consider applicants in communities with limited licenses. For example, DOH could have a deadline for Nov. 30th for initial applicants, and then if there are additional licenses still available, consider further applications on Dec. 30th until all licenses have been issued.	Rep. Ryan Cwach District 18, Yankton	No criteria added. Criteria are designed to be objective. Changes to §44:90:03:12 to establish deadline for applications (pg. 36)
44:90:03:13 – Fees for registration certificate – Application and renewal – Change in location or ownership				
8-23-21	Exhibit P	Subsection (5) – It would be helpful for the department to provide guidance on whether an applicant will be permitted to revise a deficient application without losing the application fee or whether a deficient application will require a new application with an additional application fee.	Richard Stanley (representing cannabis cultivation operation) Nashville, IN	No change – will be handled in application process
CHAPTER 44:90:04 – ESTABLISHMENTS				
44:90:04:04 – Duty to report criminal activity to law enforcement				
No date	Exhibit H	Notice to local law enforcement should be simultaneous with the notice to the Department.	Yvonne Taylor SD Municipal League	Changes to §44:90:04:03 (pg. 43)
44:90:04:05 – Co-location of medical cannabis establishments				
No date	Exhibit H	Recommend adding, before the period on the last line of subsection 1: "<u>, provided that the unit of local government allows the types of medical cannabis establishments requesting co-location</u>"	Yvonne Taylor SD Municipal League	Changes to §44:90:04:04 (pg. 44)
8-18-21	Exhibit N	Although I believe the intention of this rule is for safety reasons, I feel the reality will have detrimental effects especially for smaller towns. My reasoning is as follows: (1) This rule is	Tom Wullstein, PharmD Brandon Pharmacy, Brandon SD	Changes to §44:90:04:04 (pg. 44)

		unnecessary – My pharmacy is in a retail center and there is nothing unsafe about it. In fact, having neighbors with redundant security measures is helpful for all parties. Earlier this year, someone broke the front window of my pharmacy but none of my cameras got a good angle of the perpetrators. Luckily, my coffee shop neighbor got a perfect picture of their vehicle. Additionally, being the center business in the retail center would make the dispensary more secure for potential burglary. The business would only need to protect the front and back walls/windows with no access points to worry about on the sides; (2) This rule may cause more dangerous locations to be chosen – Because of the cost of constructing a freestanding building, a potential dispensary owner may need to decrease the financial burden by choosing an alternate location away from more popular areas. This means less traffic, less streetlights, and less police patrolling. This could dramatically increase potential for burglary or robbery.; and (3) This rule will price prospective local entrepreneurs out of the market – The cost between renting a space in a retail center and constructing a new building on freshly purchased land is an order of magnitude difference. The only people able to afford such action are the ultra-wealthy and (most likely) out of state interests. The owners will not live in town. They will not support local charities. Their kids will not attend school here. Their only interest in town will be to make money off the citizens.		
8-25-21	Exhibit W	Remove the wording about requiring all cannabis establishments to be in freestanding buildings; this would not allow cannabis dispensaries to open in any strip malls or anywhere with other tenants.	Jordan Raftis	Changes to §44:90:04:04 (pg. 44)
8-25-21	Exhibit X	This proposed rule limits available locations for medical cannabis establishments and limits the market for local real estate brokers with no corresponding increase in security or public benefit. Banks, jewelry stores, pharmacies, gun shops and other businesses that have high security requirements and require separate means of ingress/egress from their neighbors are commonly located in buildings that are not free-standing and that have other tenants. So long as medical cannabis establishments have separate means of ingress and egress from any other establishment, business, or residence and have lockable, alarmed doors separating them from neighboring businesses they are as secure as they would be in a freestanding building. <u>Recommendation:</u> 44:90:04:05. Co-location of medical cannabis establishments. 1. A medical cannabis establishment must ~~be completely freestanding and must~~ have separate means of ingress and egress from any other establishment, business, or residence, except that multiple cannabis establishments with common ownership may be co-located. Subsection 4 – We assume the Department included these provisions based on safety concerns. However this can prevent co-location of a vertically integrated business. There are safe processes available to handle pesticides and ethanol. When an applicant presents its operation plans to the Department, the Department will have the opportunity to evaluate if the applicant's intended use of pesticides and/or ethanol will be done safely. Consequently, an outright ban on these processes is an unnecessary and overbroad burden on businesses who will be affected by the rule. Modifying or deleting this section would help stakeholders who are interested in opening a lab save on COGs of having to go out and purchase or lease a stand alone facility. Still require that there is no access between licenses not owned by the same entity or entities, yet allow them to share a roof. <u>Resolution:</u> Delete subsections (B) and (C)	Ned Horsted Cannabis Industry Association of SD	Changes to §44:90:04:04 (pg. 44)
8-27-21	Exhibit Z	Prohibits labs and other establishments from co-locating. Must have the opportunity to save capital investment. DoH has to trust their auditing process that these labs will retain sovereignty and not collude to "pass tests."	Kittrick Jeffries Dakota Cannabis Consulting	Changes to §44:90:04:04 (pg. 44)

44:90:04:10 – Storage of camera footage				
8-23-21	Exhibit P	Subsection (1) – Should be changed to 30 days. The cost of video storage can be particularly expensive, especially for such a long period of 120 days. Further, if an incident arises involving theft, diversion, etc., it is highly likely that the incident will be identified within days of the event and 30 days of video storage will be more than sufficient to determine the circumstances involved.	Richard Stanley (representing cannabis cultivation operation) Nashville, IN	Change to 90 days in §44:90:04:09 (pg. 47)
8-25-21	Exhibit X	Concern with this is cost. 720 pixels, 24 hours a day, multiple cameras. Most security camera footage is stored for 30 to 90 days. This is true for hotels, retail stores, supermarkets, and even construction companies. Colorado is 40 days of camera storage. pg.93 Section E. Subsection 2. https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=9438&fileName=1%20CCR%20212-3.	Ned Horsted Cannabis Industry Association of SD	Change to 90 days in §44:90:04:09 (pg. 47)
8-27-21	Exhibit Z	Storage of security footage was increased to 120 days. This is inconsistent with industry standards and creates an expensive burden on regulated businesses - Colorado's 40 day requirement has proven adequate to meet security requirements. Also, allowance of motion recording as an option instead of continuous recording will reduce video data storage expense for businesses with no loss of necessary data. After speaking with Knight Security in Rapid City, Ken has stated that it would be easier for auditing purposes because then you don't have to comb through hours/days of "dead air" footage to find what you are looking for.	Kittrick Jeffries Dakota Cannabis Consulting	Change to 90 days in §44:90:04:09 (pg. 47)
44:90:04:13 – Agent identification badges to be obtained by establishments				
8-25-21	Exhibit X	Delete section related to agent identification badges	Ned Horsted Cannabis Industry Association of SD	Changes to §44:90:04:11 to remove DOH-issuance of agent id badges and outline requirements for establishments to provide agent id badges (pg. 48)
8-27-21	Exhibit Z	Agent badges (with the proper change in statute) shall be managed and delegated by the department and not the dispensaries.	Kittrick Jeffries Dakota Cannabis Consulting	Changes to §44:90:04:11 to remove DOH-issuance of agent id badges and outline requirements for establishments to provide agent id badges (pg. 48)
44:90:04:15 – Controlled access – Verification of identify				
No date	Exhibit H	We recommend in part 1, after "another medical cannabis establishment," that "or any" be added.	Yvonne Taylor SD Municipal League	Changes to §44:90:04:13 (pg. 49)
8-23-21	Exhibit P	Subsection (3) – regarding access to establishment premises is overly restrictive at least with regards to cultivators and product manufacturers. For instance, this rule would not allow representatives of dispensaries to tour the facility of a cultivator or product manufacturer from whom the dispensary purchases or is considering purchasing cannabis products from. This rule would also not allow a cultivator or product manufacturer to allow prospective business partners to tour their facilities. This rule would not even allow prospective contractors to enter a facility to view a job being quoted since they have not been "hired" yet at the time of quoting a job. Unpaid consultants would also be prohibited from touring a facility to provide advice and share knowledge. While some level of restriction may be appropriate (e.g., anyone less than 21 years old), the current rule is far too restrictive.	Richard Stanley (representing cannabis cultivation operation) Nashville, IN	Changes to §44:90:04:13 (pg. 49)
8-25-21	Exhibit X	"Premises" would preclude locating in a strip mall. Prohibits co-locating a cannabis manufacturing license and cannabis cultivation license on the same premises, which will increase the need to transport cannabis from facility to another. By removing this provision, we will be allowed to co-locate these two types of licenses as is common in most state medical cannabis programs.	Ned Horsted Cannabis Industry Association of SD	Changes to §44:90:04:13 (pg. 49)

		Manufacturing and cultivation generally co-locate to streamline the overall production process. Inventories must still be tracked and stored separately for each license on a co-located premises.		
44:90:04:20 – Vehicle requirements - Establishments				
No date	Exhibit H	For public safety/law enforcement reasons, we believe there should be a requirement that vehicles cannot be identifiable as transporting marijuana or cash. We recommend adding "5. Verification, with photos as necessary, that the vehicle cannot be identified as transporting cannabis or cannabis products."	Yvonne Taylor SD Municipal League	Changes to §44:90:04:18 (pgs. 51-52)
General comments on Chapter 44:90:04				
8-25-21	Exhibit E	The requirement that the establishment not be within 1,000 feet of a school needs to be clarified as it relates to what they call standards of measurement in zoning. Namely, it would be typical to say the measurement shall be from the medical cannabis building to the property line of the school. That would be good to put into the rules to clarify what the measurement is, namely where it starts and ends.	Greg Neitzert Sioux Falls, SD	No change – 1000 ft. requirement in §34-20G-55
CHAPTER 44:90:05 – CANNABIS CULTIVATION FACILITIES				
44:90:05:10 – Safety of cannabis – Use or presence of prohibited pesticides – Contaminants				
8-23-21	Exhibit Q	References a "violation" in subsection (1) and "serious violation" in subsection (2) and (3), but neither of these terms or the penalties for violation are defined in the rules. This rule deals with the use of illegal pesticides and chemicals. Please consider making all violations of the pesticide and chemical prohibitions whether knowing or unknowing to be bright-line violations with appropriate penalties. The proposed rule should also give consideration to increased penalties to repeat offenders, including but not limited to revocation of license.	Representative Ryan Cwach District 18, Yankton, SD	No change – covered by §§ 34-20G-80 and 34-20G-81
CHAPTER 44:90:06 – CANNABIS TESTING FACILITIES				
44:90:06:01 – Required accreditation and registration – ISO/IEC 17025 – Drug Enforcement Agency				
8-25-21	Exhibit U	As drafted with different standards for labs entering the SD cannabis market either side of a January 1, 2024 date, the rule is confusing and we believe creates arbitrary barriers to entry for testing labs. The goal is to maintain the date certain as prescribed by LRC to ensure there is not an unconstitutional delegation of authority to the accreditation body. The second goal with this recommended change is alleviate the chicken and the egg scenario for obtaining the proper accreditation after a date set in the future. (Labs will be NOT be able to obtain accreditation if they are not allowed to accept product to test.) Recommended changes to 44:90:06:01. 1. On or after November 1, 2021, all cannabis testing facilities must work with an accreditation body to ensure compliance with applicable rules and ensure progress towards achieving ISO/IEC 17025 accreditation, with a scope of accreditation that includes all analytical tests performed by the facility. 2. Upon successful licensure and prior to accepting cannabis or cannabis products for testing, all cannabis testing facilities shall: (A) begin working with an accreditation body within 6 months of licensing to ensure compliance with applicable rules and ensure progress towards achieving ISO/IEC 17025 accreditation, with a scope of accreditation that includes all analytical tests performed by the facility. (B) Successfully complete accreditation within 18 months of licensing; or3. If a cannabis testing facility has not successfully completed accreditation upon the 18th month, a six-month remediation period may occur so that testing is not suspended and will involve:	Deb Peters, Pinnacle Adviser, LLC (consultant with SD analytical testing laboratory)	Changes to §44:90:06:01 (pg. 67)

		(A) The facility showing cause as to why it has not successfully completed ISO/IEC accreditation and list the steps required to be performed to bring the facility within the scope of accreditation; and (B) The facility submits quarterly reports to the department on its progress toward ISO/IEC accreditation and submits to confirmation testing at its own expense. 4. Failure to successfully complete accreditation or subsequent remediation will result in licensure being revoked. 5. A cannabis testing facility shall register with the Drug Enforcement Agency pursuant to 21 C.F.R. part 1301 (2019).		
8-25-21	Exhibit v	As drafted with different standards for labs entering the SD cannabis market either side of a January 1, 2024 date, the rule is confusing and we believe creates arbitrary barriers to entry for testing labs. The goal is to maintain the date certain as prescribed by LRC to ensure there is not an unconstitutional delegation of authority to the accreditation body. The second goal with this recommended change is alleviate the chicken and the egg scenario for obtaining the proper accreditation after a date set in the future. (Labs will be NOT be able to obtain accreditation if they are not allowed to accept product to test.) <u>Recommended changes to 44:90:06:01.</u> 1. On or after November 1, 2021, all cannabis testing facilities must work with an accreditation body to ensure compliance with applicable rules and ensure progress towards achieving ISO/IEC 17025 accreditation, with a scope of accreditation that includes all analytical tests performed by the facility. 2. Upon successful licensure and prior to accepting cannabis or cannabis products for testing, all cannabis testing facilities shall: (A) begin working with an accreditation body within 6 months of licensing to ensure compliance with applicable rules and ensure progress towards achieving ISO/IEC 17025 accreditation, with a scope of accreditation that includes all analytical tests performed by the facility. (B) Successfully complete accreditation within 18 months of licensing; or3. If a cannabis testing facility has not successfully completed accreditation upon the 18th month, a six-month remediation period may occur so that testing is not suspended and will involve: (A) The facility showing cause as to why it has not successfully completed ISO/IEC accreditation and list the steps required to be performed to bring the facility within the scope of accreditation; and (B) The facility submits quarterly reports to the department on its progress toward ISO/IEC accreditation and submits to confirmation testing at its own expense. 4. Failure to successfully complete accreditation or subsequent remediation will result in licensure being revoked. 5. A cannabis testing facility shall register with the Drug Enforcement Agency pursuant to 21 C.F.R. part 1301 (2019).	Matthew Jorgenson, CEO Cannabis Chem Lab	Changes to §44:90:06:01 (pg. 67)
8-25-21	Exhibit X	It is critically important to public health and to the industry that we get this testing stuff correct out of the gate. Please see additional documents provided by CIASD and labs. As drafted with different standards for labs entering the SD cannabis market either side of a January 1, 2024 date, the rule is confusing and we believe creates arbitrary barriers to entry for testing labs. The goal is to maintain the date certain as prescribed by LRC to ensure there is not an unconstitutional delegation of authority to the accreditation body. The second goal with this recommended change is alleviate the chicken and the egg scenario for obtaining the proper accreditation after a date set	Ned Horsted Cannabis Industry Association of SD	Changes to §44:90:06:01 (pg. 67)

		in the future. (Labs will be NOT be able to obtain accreditation if they are not allowed to accept product to test.) Amend 44:90:06:01 as follows to maintain the date certain remain intact as prescribed by LRC to ensure there is not an unconstitutional delegation of authority to the accreditation body. <u>Recommendation</u> 44:90:06:01. Required Accreditation and Registration – ISO/IEC 17025 – Drug Enforcement Agency. 1. On or after November 1, 2021, all cannabis testing facilities must work with an accreditation body to ensure compliance with applicable rules and ensure progress towards achieving ISO/IEC 17025 accreditation, with a scope of accreditation that includes all analytical tests performed by the facility. 2. Upon successful licensure and prior to accepting cannabis or cannabis products for testing, all cannabis testing facilities shall: (A) begin working with an accreditation body within 6 months of licensing to ensure compliance with applicable rules and ensure progress towards achieving ISO/IEC 17025 accreditation, with a scope of accreditation that includes all analytical tests performed by the facility. (B) Successfully complete accreditation within 18 months of licensing; or 3. If a cannabis testing facility has not successfully completed accreditation upon the 18th month, a six-month remediation period may occur so that testing is not suspended and will involve: (A) The facility showing cause as to why it has not successfully completed ISO/IEC accreditation and list the steps required to be performed to bring the facility within the scope of accreditation; and (B) The facility submits quarterly reports to the department on its progress toward ISO/IEC accreditation and submits to confirmation testing at its own expense. 4. Failure to successfully complete accreditation or subsequent remediation will result in licensure being revoked. 5. A cannabis testing facility shall register with the Drug Enforcement Agency pursuant to 21 C.F.R. part 1301 (2019).		
8-27-21	Exhibit Z	Add language with the intent of deleting the July 2024 deadline, yet all labs have to start the process for ISO accreditation and have 18 months to complete accreditation. Don't put a hard deadline like Oregon did for ORELAP accreditation. This hard deadline created a higher barrier of entry for new labs to get into the market.	Kittrick Jeffries Dakota Cannabis Consulting	Changes to §44:90:06:01 (pg. 67)
CHAPTER 44:90:07 – CANNABIS PRODUCT MANUFACTURING FACILITIES				
44:90:07:02 – Prohibited manufacturing activities				
8-25-21	Exhibit X	The referenced statute as the authority for this rule has no connection whatsoever to the rule's language. Replace reference or delete rule absent relevant authority. Subsection 5(E) – delete "<u>, including lozenges, gummies, and cookies</u>". Subsection 5(F) – delete "<u>, including ointments, creams, lotions, bath soaks, and transdermal patches</u>".	Ned Horsted Cannabis Industry Association of SD	Authority updated. Changes to §44:90:07:04 to remove requested language (pg. 77-78).
CHAPTER 44:90:08 – CANNABIS DISPENSARIES				
CHAPTER 44:90:09 – SAMPLING AND TESTING				
44:90:09:01 – Mandatory testing prior to transfer				
7-28-21	Exhibit B	Modify the draft rules to include a list of required microbial tests with corresponding action levels that will protect public health and safety. We recommend that the DOH modify the regulations for required microbial testing for medical cannabis and cannabis products to include only specific pathogen species tests. These six tests are: (1) *Salmonella* species; (2) Shiga-toxin producing	Sherman Hom, Dir. of Regulatory Affairs Medical Genomics Beverly, MA	Changes to – §44:90:01:01 to add definition of action level (pg. 3)

		Escherichia coli (STEC); (3) *Aspergillus flavus*; (4) *Aspergillus fumigatus*; (5) *Aspergillus niger*; and (6) *Aspergillus terrus*. Since many medical cannabis patients are ill, especially those that are immunocompromised, and the DOH wants to ensure safe products for patient consumption, the action level for all six tests should be "none detected/gram". Recommends that the required microbial testing for medical cannabis and cannabis product rules include a statement concerning allowable methods to read: "(1) A validated method using guidelines for food and environmental testing put forth by the USP, FDA, and AOAC Appendix J and cannabis as a sample type; or (2) Another approved AOAC, FDA, or USP validated method using cannabis as a sampling type."		– §44:90:05:10 to include action levels (pgs. 64-66) – §44:90:07:03 (pgs. 74-77) – §44:90:09:01 (pg. 85)
8-25-21	Exhibit U	Not requiring all testing from inception creates the possibility of medical cannabis users ingesting harmful fungus, bacteria, pesticides, solvents, and heavy metals in cannabis and cannabis products. Any and ALL testing facilities should be ready to test for all of the Department of Heath's areas of concern from the inception of their laboratory as to ensure the highest safety requirements for the medical cannabis industry. Recommendation to amend 44:90:09:01 (A) Beginning ~~July 1~~ November 1, 202~~2~~1: and (B) Beginning ~~July 1,~~ November 1, 202~~3~~1	Deb Peters, Pinnacle Adviser, LLC (consultant with SD analytical testing laboratory)	No change– nothing prohibits laboratory from coming on sooner
8-25-21	Exhibit V	Not requiring all testing from inception creates the possibility of medical cannabis users ingesting harmful fungus, bacteria, pesticides, solvents, and heavy metals in cannabis and cannabis products. Any and ALL testing facilities should be ready to test for all of the Department of Heath's areas of concern from the inception of their laboratory as to ensure the highest safety requirements for the medical cannabis industry. Recommendation to amend 44:90:09:01 (A) Beginning ~~July 1~~ November 1, 202~~2~~1: and (B) Beginning ~~July 1,~~ November 1, 202~~3~~1	Matthew Jorgenson, CEO Cannabis Chem Lab	No change– nothing prohibits laboratory from coming on sooner
8-25-21	Exhibit X	Not requiring all testing from inception creates the possibility of medical cannabis users ingesting harmful fungus, bacteria, pesticides, solvents, and heavy metals in cannabis and cannabis products. Any and ALL testing facilities should be ready to test for all of the Department of Heath's areas of concern from the inception of their laboratory as to ensure the highest safety requirements for the medical cannabis industry. Recommendation: Amend 44:90:09:01 1. (A) Beginning ~~July 1~~ November 1, 202~~2~~1: and (B) Beginning ~~July 1,~~ November 1, 202~~3~~1	Ned Horsted Cannabis Industry Association of SD	No change– nothing prohibits laboratory from coming on sooner
8-27-21	Exhibit Z	Change all mandatory testing to be required July 1, 2022 if not earlier. Public safety should be the number one priority when it comes to pesticides and heavy metals.	Kittrick Jeffries Dakota Cannabis Consulting	No change– nothing prohibits laboratory from coming on sooner
44:90:09:06 – Remediation of non usable batches				
8-25-21	Exhibit X	Delete subsection 4 and add new section at the end to read "If an establishment fails testing, the establishment may submit two samples to the same lab that failed the batch initially or they may submit two samples to two new labs (one sample to each)." This works like a "2 strike" rule. You should be able to get a second opinion rather than having to destroy the entire batch.	Ned Horsted Cannabis Industry Association of SD	No change – rules provide for retesting and remediation
CHAPTER 44:90:10 – PACKAGING, LABELING, AND ADVERTISING				
44:90:10:01 – Packaging for transfer or sale – General requirements				
8-23-21	Exhibit P	There are numerous problems with the current requirement for cultivation facilities to retail package flower and trim if sold directly to a dispensary. First, retail packaging of flower and trim can be very labor intensive and cost prohibitive for small cultivators. This would force small	Richard Stanley (representing cannabis cultivation operation) Nashville, IN	No change pursuant to §34-20G-72(5)

		cultivators to sell their flower and trim to larger product manufacturers or cultivators for extraction or merely for the service of retail packaging. Second, it is even possible that small cultivators could be forced out of the market for retail flower and trim sales if there are no product manufacturers or cultivators who are willing to provide a retail packaging service. Third, rule 44:90:09:01-3 requires sample testing any time cannabis is transferred between cultivation, product manufacturing and dispensary establishments. If a cultivator were to engage a product manufacturer merely for the service of retail packaging of flower or trim, this would mean that the cultivator would be burdened with two different testing requirements for the same product—once when the flower or trim is transferred to the product manufacturer for retail packaging, and again when the retail packaged flower or trim is transferred to the dispensary. Fourth, dispensaries will be limited in the retail packaging of flower and trim they can provide (e.g., smaller portions for budget conscious patients) if they are not allowed to buy bulk flower and trim from cultivators for retail packaging by the dispensary.		
8-25-21	Exhibit X	Mandating retail packaging by producers makes storage and inventory control more difficult for retailers, increases the chances of spoilage, and limits dispensaries' flexibility in product packaging and marketing. The proposed rule would create an unreasonable burden on the dispensaries who will be affected by the rule. Resolution: Strike 10:01 2. and 3.	Ned Horsted Cannabis Industry Association of SD	No change pursuant to §34-20G-72(5)
8-27-21	Exhibit Z	Subsection 2 – Delete these two subsections to allow cultivation facilities to transfer flowers in bulk. The shelf life of a product is greatly reduced when packaging 1/8ths into their own designated package. (Almost 1/2 of the shelf life and that is terrible for farmers who are on consignment.)	Kittrick Jeffries Dakota Cannabis Consulting	No change pursuant to §34-20G-72(5)
44:90:10:10 – Labeling claims – Results of testing				
8-25-21	Exhibit X	Subsection 3 – All cannabinoids should be allowed to be on test results. There are over 120 cannabinoids. CBG CBN CBD CBC THCA THCV etc. Some of this stuff should be listed by testing facilities as it will help patients. Combinations of cannabinoids such as CBD with different combinations of terpenes dictate what effects a product will give a person. Indica and Sativa are based off of the Entourage Effect which is outlined above.	Ned Horsted Cannabis Industry Association of SD	No change – no reliable test for CBD
44:90:10:14 – Required warnings – Indication that edible product contains cannabis – Side effects – Legal status of cannabis				
8-12-21	Exhibit K	Recommend warnings be modified to include the following: "Cannabis has a high potential for abuse. This product has not been approved by the U.S. Food and Drug Administration for preventing or treating any condition or disease process."	Timothy Engel SD State Medical Association	Changes to §44:90:10:14 (pg. 101-102)
8-25-21	Exhibit X	This requirement is tied to the statutorily unauthorized limit on potency in 44:90:02:10. We don't limit the potency of prescription drugs, why have an arbitrary 60 percent thrown in here? What is this based off of? Averages for medical patients are sometimes 70-80-90%. Oregon Concentrate menu: https://www.leafly.com/dispensary-info/beaver-bowls/menu?q=concentrate Recommendation: Strike 44:90:10:14 3. (D)	Ned Horsted Cannabis Industry Association of SD	No change pursuant to §34-20G-72(5)
44:90:10:16 – Labeling prohibitions				
8-25-21	Exhibit X	Subsection 6 – delete "human, animal, creature, vehicle".	Ned Horsted Cannabis Industry Association of SD	No change
44:90:10:17 – Prohibited forms of advertising				
8-27-21	Exhibit Z	FCC and corporate bureaucracies are already in place for broadcasters, newspapers, social media among other outlets. I had my cannabis consulting page up for less than a month and was banned from advertising. This is unnecessary and should be left to the lowest forms of government.	Kittrick Jeffries Dakota Cannabis Consulting	No change

		Municipalities and Counties should be allowed to advertise whatever they want in their own jurisdiction and however they choose to do it.		
8-27-21	Exhibit AA	Eliminate the four word prohibition of advertising on television or radio contained in SDARL 44:90:10:17 subpart 4. – The prohibition is unconstitutional. The U.S. Supreme Court has long held that the First Amendment protects truthful advertising for legal products and the authority of South Dakota or any other State to regulate marijuana advertising is subject to constitutional limits (Virginia Bd. Of Pharmacy v. Virginia Citizens Council; Central Hudson Gas & Electric v Public Service Commission; Thompson V. W. States Med. Ctr; 44 Liquormart, Inc. v Rhode Island, etc. etc). There is some leeway to regulate commercial speech, but that latitude exists mainly to ensure that sales pitches are honest. As a general matter, where speech proposing a commercial transaction is truthful, regulation is permissible only where the government can show the law is necessary to serve a substantial interest; that it advances the interest in a direct and material way; and restricts speech no more than necessary to achieve the asserted state purpose. A total prohibition of TV and radio advertising fails that threshold spectacularly. – The language makes winners of out of state tech giants and losers of local broadcasters. In addition to advertising, South Dakota TV and radio stations provide news, entertainment, weather and sports to their local communities every day. The stations have employees and pay salaries. They pay property taxes on their buildings and towers. They pay sales tax on their equipment, utilities and other purchases. They raise thousands of dollars for worthy causes. Broadcasters have community service obligations as a condition of their license so community support is not only an opportunity, it's an obligation. – And while I'm pleased Amazon is building a fulfillment center near Sioux Falls, the beneficiaries of the advertising rules including Facebook, TikTok, or Snapchat, don't have much of a stake or an interest in South Dakota or our communities. Excluding broadcasters from advertising provides a competitive advantage to those multi-billion dollar tech companies and a competitive disadvantage to broadcasters with a local commitment. The language as drafted seems upside down. The prohibition is unnecessary because federal issues limit advertising. Banks and broadcasters have similar marijuana challenges as they both depend upon federal licenses to operate. TV and radio stations hold licenses issued by the Federal Communications Commission. Under federal law, marijuana is classified as a Schedule 1 controlled substance, illegal to use or possess. Every FCC attorney advises broadcast stations to avoid marijuana in any form because advertising for a federal substance that is generally illegal could jeopardize the approval of their federal license. Congress is considering action on the issue, but it's slow going. In states where marijuana has been legal for several years some ads are running, but those stations are outliers, small in number and the industry is expecting federal sanctions. With or without the ban, there will be little or no marijuana advertising on TV or radio until Congress takes action. – Finally, TV and radio are prohibited from advertising but newspapers are not? I'm a friend to the newspapers and want them to participate. But I can't fathom the reasoning behind excluding ads on TV and radio while allowing them in newspapers. If anything, it just further illustrates the inequitable nature of the proposed rules. – I've been part of a number of meetings on the subject of marijuana advertising and broadcasters are as cautious as everyone else watching this life altering change of marijuana use both medically and recreationally. When the managers and owners talk about advertising their primary interest is that we do it right as a society. Buy from the licensed dealers, Make sure the products are registered. Obey the laws. Don't drive. Use your head. I haven't heard a	Steve Willard SD Broadcasters Assn	Changes to §44:90:10:17 to clarify restrictions apply to all media – not just radio and tv. (pg. 104)

		whisper of interest in extolling the merits of any given product. If advertising is allowed by Congress and it comes to South Dakota my expectation is that broadcast advertising will be fairly muted, educational, and cautious. I don't have such expectations with the social media platforms. I do know that I trust those with a presence in South Dakota to do what's best for South Dakota.		
44:90:10:18 – Target audience – Establishments and adult cardholders only – Prohibition on advertising to practitioners				
8-25-21	Exhibit X	Delete subsection 2(A)(2) – "Interacting with the public at events sponsored by the establishment"	Ned Horsted Cannabis Industry Association of SD	No change
44:90:10:19 – Prohibited content – Advertisements				
8-25-21	Exhibit X	Delete subsections (9) – "Make claims that cannabis has curative or therapeutic benefits" and (10) – "Claim any health or physical benefit"	Ned Horsted Cannabis Industry Association of SD	No change
General comments on Chapter 44:90:10				
8-16-21	Exhibit E	We have a sign showing up in boulevards all over Sioux Falls right now. It advertises medical marijuana online doctor evaluations. When you look it up it is an out of state outfit that will get you a card for the Flandreau tribe program. I would request you look at adding to your rules if you have the authority that no entity or third party can advertise with certain things like a leaf or word marijuana in public. Your rules right now only restrict what a licensed establishment can do. It doesn't address third parties. I could see a loophole being exploited for third parties to advertise with yard signs, billboards, TV and the like.	Greg Neitzert Sioux Falls, SD	No changes – Authority in §34-20G-72(5)(i) is specific to establishment
8-26-21	Exhibit E	Consider if you can or should have advertising rules that apply to any person or entity that is not a registered entity. State law and your proposed rules limit advertising by registered entities, but is silent as it relates to other third parties. If it is in your legal authority, I would request you consider if you might address restricting the advertising by third parties. A couple of examples already we have in Sioux Falls: 1. Yard signs continue to pop up with marijuana leaves and/or using words like 'marijuana' advertising a phone number and website where one can obtain a tribal card for the tribal program. These are not parties that are or would be registered entities. 2. Billboards advertising the tribal program, including marijuana leaves and other verbiage. These examples would include content that would be prohibited off-premise advertising for registered entities, but if they are not registered entities there is no prohibition, I do not believe. Restrictions on advertising appears to be in SDCL 34-20G-72(5)(i) and under (5) it is 'Governing medical cannabis establishments...' so perhaps you may not have this power, but it would be good to review the advertising restrictions within your power. There could likely be various examples of these things occurring that will not fall under current prohibitions, such as third parties advertising marijuana related commercial services or consultation (e.g. how to get a card).	Greg Neitzert Sioux Falls, SD	No changes – Authority in §34-20G-72(5)(i) is specific to establishment
CHAPTER 44:90:11 – RECORDKEEPING				
44:90:11:01 – Inventory tracking system – Required use				
8-27-21	Exhibit Z	From someone who has made a lot of money consulting stakeholders on seed-to-sale cannabis, I think it is the largest overreach of government in modern history in cannabis. Seed to sale tracking should be borderline criminal and is a huge undue burden on stakeholders. No other industry has this type of bureaucracy set in place.	Kittrick Jeffries Dakota Cannabis Consulting	No change
CHAPTER 44:90:12 – ENFORCEMENT				
44:90:12:01 – Department inspection of establishments – Recalls – Corrective action plan				
8-25-21	Exhibit X	The DOH should reserve the right to not only destroy the product, but order the product go through the remediation processes if applicable. Eg. If it sits on a shelf too long and gets moldy, you should reserve the right to allow or order remediation.	Ned Horsted Cannabis Industry Association of SD	Changes to §44:90:12:03 (pg. 117-118)

8-27-21	Exhibit Z	In the recall plan by the department, the department should reserve the right to not only destroy the product, but order the product go through the remediation process.	Kittrick Jeffries Dakota Cannabis Consulting	Changes to §44:90:12:03 (pg. 117-118)
44:90:12:02 – Suspension or revocation of registration certificates for serious violations				
8-23-21	Exhibit P	Subsection (1)(G) – States that a cannabis establishment's registration certificate may be suspended or revoked for "Obtaining cannabis seeds, cannabis seedlings, cannabis plants, cannabis, cannabis extract, or cannabis products in violation of this article or SDCL chapter 34-20G" should be entirely removed or should be replaced with a specific list of the types of conduct that are prohibited. As currently written, the rule is vague and unclear as to what specific methods of obtaining such materials would result in a suspension or revocation.	Richard Stanley (representing cannabis cultivation operation) Nashville, IN	No change
8-25-21	Exhibit X	Subsection (1)(G) delete "<u>cannabis seeds, cannabis seedlings,</u>".	Ned Horsted Cannabis Industry Association of SD	No change
CHAPTER 44:90:13 – PETITIONS TO RECOGNIZE DEBILITATING MEDICAL CONDITIONS				
44:90:13:01 – Qualifying debilitating medical conditions				
7-28-21	Exhibit A	Remove glaucoma from list of debilitating medical conditions based on testimony at Medical Marijuana Committee meeting on May 26th from Jeremy Daniel, President of SD Pharmacists that: (1) marijuana is ineffective as a treatment regime for glaucoma since it does not lower eye pressures to normal values; (2) the pressure-lowering properties of marijuana are only observed during relative intoxification. A person would need to remain high most of the date for eye pressure to be reduced.	Representative Fred Deutsch District 4, Florence, SD	No change – Practitioner doesn't have to certify if they believe there is no therapeutic/palliative benefit to patient
7-27-21	Exhibit C	Remove glaucoma as a qualifying condition for medical marijuana card issuance. The data available to date in the medical literature does not support the use of marijuana or its derivatives (in any form) as a treatment option for glaucoma.	SD Academy of Ophthalmology Ryan Geraets, MD	No change – Practitioner doesn't have to certify if they believe there is no therapeutic/palliative benefit to patient
7-29-21	Exhibit D	Consider addition of hypersensitive nerve syndrome, psoriatic arthritis, psoriasis, and neuropathy.	Karla Powell	No change – can be certified under chronic pain
7-23-21	Exhibit G	Remove glaucoma as a qualifying condition for medical marijuana card issuance.	J. Geoffrey Slingsby, MD Sioux Falls, SD	No change – Practitioner doesn't have to certify if they believe there is no therapeutic/palliative benefit to patient
8-12-21	Exhibit K	Amend the first paragraph to read "In addition to the conditions listed in SDCL 34-20G-1(8), the following are recognized as qualifying debilitating medical conditions if the practitioner certifies they are debilitating for the patient.". Remove glaucoma as a qualifying condition.	Timothy Engel SD State Medical Association	Changes to §44:90:13:01 (pg. 122) No change – Practitioner doesn't have to certify if they believe there is no therapeutic/palliative benefit to patient
8-19-21	Exhibit O	Include spinal cord injuries on list of medical conditions.	Lawrence A Clouse Delmont, SD	No change – can be certified under chronic pain
8-18-21	Exhibit S	Remove glaucoma as a qualifying condition for medical marijuana card issuance.	Aimee Schulte, O.D., President SD Optometric Society	No change – Practitioner doesn't have to certify if they believe there is no therapeutic/palliative benefit to patient
8-25-21	Exhibit X	During the townhalls the department heard from a wide variety of people suffering from mental health issues such as anxiety, depression among many other illnesses, yet chose to not add those conditions to their rules. Why?	Ned Horsted Cannabis Industry Association of SD	No change

		Add new subdivision: "(I) Conditions recognized by medical cannabis programs in any other state, as of September 1, 2021." If it is good enough for a doctor and a patient in another state, should be good enough for SD. See also, Drivers License, gun permits.		
8-27-21	Exhibit Z	During the townhalls the department heard from a wide variety of people suffering from mental health issues such as anxiety, depression among many other illnesses, yet chose to not add those conditions to their rules. Why?	Kittrick Jeffries Dakota Cannabis Consulting	No change
44:90:13:02 – Petitions – Required forms				
8-25-21	Exhibit X	Subsection (4) – delete "peer-reviewed research". Subsections (3) & (4) – This seems to be too much to ask of physicians. 3&4 in particular will block MANY patients from accessing their card.	Ned Horsted Cannabis Industry Association of SD	No change
GENERAL COMMENTS				
8-23-21	Exhibit Q	Throughout the proposed rules, the general authority and law implemented citations appear to be inapplicable. The Department repeatedly claims implementation of the affirmative defense statutes such as SDCL 34–20G-9 which deals with affirmative defenses for cultivation facilities and agents. The Department has no authority to implement rules based on this law. Instead, I encourage the Department to limit rule implementation to SDCL 34-20G-72, which gives the Department broad authorities.	Representative Ryan Cwach District 18, Yankton, SD	Authority updated per LRC form & style changes
08-26-21	Exhibit Y	Patients need their medicine to be consistent and predictable in potency, quality, and availability, but reasonably priced, and soured within the medical system instead of the black market. We have identified five areas where the current proposed rules work against these objectives, and which can and should be improved: 1. A statewide licensee cap is necessary to avoid repeating the disaster in Oklahoma. – Suggested language: 34-20G-#. Number of medical cannabis establishment licenses. The Department shall issue no more than one: (1) Dispensary license per 30,000 residents according to the most recent US Census produced by the US Census Bureau; (2) Cannabis product testing facility license per 500,000 residents according to the most recent US Census produced by the US Census Bureau; and (3) Cultivation and manufacturing license per 100,000 residents to the most recent US Census produced by the US Census Bureau. 2. Financial assurance fees for licensees applicants will prevent the program from failing before it begins. – Suggested language: 34-20G-#. Financial assurance fee and bond. Upon receipt of notification by the Department that a medical cannabis establishment is eligible for licensure, the applicant shall submit the following items to qualify for further consideration of the application: (1) A certification fee, made payable to the "South Dakota Department of Health", in the amount of ninety-thousand dollars ($90,000) for a dispensary and one-hundred ten-thousand dollars ($110,000) for a cannabis product testing facility or cultivation and manufacturing facility; and (2) A security bond, the amount of which the Department shall determine is appropriate at its discretion, but which may not exceed one-hundred thousand dollars for a dispensary, and may not exceed one-million dollars for a cannabis product testing facility or cultivation and manufacturing facility. 3. The program can only succeed if it completely bars any cannabis from outside of South Dakota from entering the market. – Suggested language: 34-20G-#. No importation of cannabis. All cannabis regulated pursuant to this Chapter shall be produced entirely in South Dakota by South Dakota licensees. 4. Similarly, the program must limit the amount of cannabis cultivators can grow; and – Suggested language: 34-20G-#. Cultivation facility limitations. Cultivation facilities may cultivate medical marijuana in indoor, outdoor, or greenhouse facilities: (1) Each indoor	Joseph Sheppard/Kirk Kaczmarek (representing SD client) 420 Consulting Springfield, MO	No changes – Suggested changes are to statute not rule

		facility utilizing artificial lighting will be limited to no more than thirty thousand ($30,000) square feet of flowering plant canopy space; (2) Each outdoor facility utilizing natural light will be limited to no more than two thousand eight hundred (2,800) flowering plants; and (3) Each greenhouse facility using a combination of natural and artificial lighting will be limited to, at the election of the licensee, either no more than two thousand eight hundred (2,800) flowering plants or no more than thirty thousand ($30,000) square feet of flowering plant canopy space. 5. Untested and under regulated hemp-based derivatives like THC Delta-8, Delta-10, and THC-O-Acetate threaten public health and should be either banned or incorporated into the regulatory framework.		
8-27-21	Exhibit Z	– If your rules are too restrictive in certain areas, the black market will take advantage of those policies. – I only saw one mention of the "universal symbol." I believe that the universal symbol shall be on any product with more than .3% THC on the package and in clear view. I would like more clarity on where the universal symbol shall be placed by packaging and labeling requirements. – Please ask for input from the Department of Agriculture, especially in other states, when looking at pesticides. There are hundreds of pesticides/fungicides/insecticides that can be used in cannabis cultivation that are not listed that are safe for human consumption. One big lesson that we learned in other states was setting an arbitrary date on when a certain pesticide would be banned. For example: Pesticide "X" is banned effective immediately, however farmers have already sprayed that pesticide on their plants and now have complete crop failure when the pesticide was legal 5 minutes ago. By talking to the DOA you can gauge the half life of these products and gather reliable data on when the pesticide will be out of the vascular system of the plant and have no effect on humans while still allowing farmers the opportunity to get rid of their remaining stock of that product. – Potency caps are bad in general. You hurt legal cannabis businesses that are abiding by the rules when the black market will continue to make those products available regardless. – Consider setting a cap on how much a municipality and county can charge for cannabis licenses. – Consider taxes and what tax will be on Medical Marijuana products and if Municipalities and Counties will be able to add a sales tax.	Kittrick Jeffries Dakota Cannabis Consulting	No change
8-27-21	Exhibit BB	Agree with the attached document *[written comments submitted by CIASD (Exhibit X)]* as it helps clarify and add consistency to the proposed rules. Access, regulation, and the ability to deliver what people need is very important to me personally. It directly impacts my father struggling with cancer, my aunt battling Parkinson, and my mom living with PTSD for a couple examples. Having these rules shored up for consistency and accuracy will greatly help us all.	Bekki Engquist-Schroeder Owner, Licensed Cosmetologist Wynie Mae's Aveda Salon & Spa Vermillion, SD	See responses to Exhibit X